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4 UNITED STATES DISTRICT COURT  
5 WESTERN DISTRICT OF WASHINGTON  
6 AT SEATTLE

7 NATIONAL CITY BANK, N.A., )  
8 )

9 Plaintiff, )

10 v. )

11 REPUBLIC MORTGAGE HOME LOANS, )  
12 LLC, JOSH WESTMARK, SUSAN )  
13 TALLMAN, TAMIEKO CODUTE, and )  
14 SOUN MOFFETT, )

15 Defendants. )  
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No. C09-1550RSL

ORDER REGARDING COMPLIANCE  
WITH PARAGRAPH 3 OF THE  
TEMPORARY RESTRAINING ORDER

14 This matter comes before the Court on plaintiff's "Emergency Motion for  
15 Compliance with Temporary Restraining Order." Dkt. # 7. Having reviewed the memoranda,  
16 declarations, and exhibits submitted by the parties, the Court finds as follows:

17 Pursuant to paragraph 3 of the Temporary Restraining Order issued on October 30,  
18 2009, defendants were required to "return to National City Bank any and all records, documents,  
19 and/or information pertaining to National City Bank customers . . . and to purge any such  
20 information that is not capable of being physically relinquished to National City Bank . . . ." Dkt.  
21 # 5 at 3. Defendants Westmark, Codute, and Republic Mortgage Home Loans acknowledge that  
22 they possess the names and/or contact information of National City Bank customers.  
23 Nevertheless, they argue that this information need not be returned because (a) the information  
24 was not provided by National City Bank and therefore cannot be "returned," (b) the information  
25 is the personal property of the individual defendants or is co-mingled with other non-National  
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1 City Bank information, and (c) National City Bank already has the information, so there is no  
2 need to return it. None of defendants' arguments is well-taken.

3           Plaintiff has demonstrated that defendants were targeting clients of National City  
4 Bank as potential customers. Paragraph 3 was intended to deprive defendants of information that  
5 defendants obtained while employed by National City Bank: such information is generally  
6 considered the property of the employer, and defendants have offered no case law or authority  
7 supporting their theory of personal ownership. The fact that National City Bank did not provide  
8 defendants with an official "customer list" before they left plaintiff's employ is irrelevant:  
9 "information pertaining to National City Bank's customers" must be returned or purged,  
10 regardless of its form. If defendants retained or compiled customer information that was acquired  
11 during their time with National City Bank, whether in a database, rolodex, or other format, such  
12 information is subject to paragraph 3. Nor is this a dispute to be hashed out in discovery.  
13 Plaintiff demonstrated that it will suffer irreparable harm and loss if defendants are permitted to  
14 (a) convert the property of National City Bank to defendants' own use and benefit and (b) solicit  
15 National City Bank accounts, clients, and customers. The purpose of paragraph 3 was to mitigate  
16 this harm by making it impossible for defendants to gain an advantage using information they  
17 obtained while employed by National City Bank. Whether National City Bank also possesses the  
18 customer information is beside the point.

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20           For all of the foregoing reasons, plaintiff's motion is GRANTED. Defendants are  
21 out of compliance with the Temporary Restraining Order issued on October 30, 2009, insofar as  
22 they have failed to return or purge information, in any and every form, pertaining to National City  
23 Bank customers. By noon on Thursday, November 12, 2009:

24           1. Defendant Westmark shall purge his contact list of all names and information acquired  
25 during his time at National City Bank and provide a summary of such purged records (including  
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1 names and other identifying data) to National City Bank;

2 2. Defendant Codute shall return a copy of the BDR reports in her possession to National  
3 City Bank and shall deliver the originals to her attorney, Robert Henry, for safe keeping until this  
4 matter is resolved.<sup>1</sup>

5 3. Defendant Republic Mortgage Home Loans shall individually and personally contact  
6 all former National City Bank employees to determine whether they have information obtained  
7 while employed at National City Bank and shall return or purge such information pursuant to  
8 paragraph 3 of the Temporary Restraining Order.

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10 Dated this 10th day of November, 2009.

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12 Robert S. Lasnik

13 United States District Judge  
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25 <sup>1</sup> Ms. Codute is using or may use these documents to support her unpaid wage claim against  
26 National City Bank. Whether such use is appropriate has not been addressed, but it does not appear to  
pose a threat to plaintiff's legitimate business interests.